

**McDermott Marine Construction, a Division of
McDermott, Inc. and Pile Drivers Local Union
No. 2375, affiliated with United Brotherhood of
Carpenters and Joiners of America, AFL-CIO.**
Case 31-CA-16556

November 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Exceptions filed to the judge's decision in this case¹ present the question whether the Respondent has violated Section 8(a)(1) of the Act by denying non-employee union representatives access to employees engaged in the construction of an offshore oil platform for the purpose of conducting organizational activities.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.

Applying the test set forth in *Jean Country*,² we agree with the judge's finding that the property right and the Section 7 right at issue here are relatively equal in strength. We also agree that the facts in this case establish that no reasonable means of communicating the Union's organizational message to the employees existed other than through the Respondent's permitting the Union access to its employees. Contrary to the judge, however, we conclude that, in view of the compelling safety considerations demonstrated by the Respondent, the remedy should be limited to requiring reasonable onshore access to the Respondent's employees.

The facts, fully set out in the judge's decision, may be summarized as follows. The Respondent operates construction barges for the purpose of constructing and installing oil drilling platforms and pipelines, including Platform Gail, a construction project 7 miles off the coast of Southern California. The Respondent employs about 500 to 550 employees, most of whom live in Morgan City or Houma, Louisiana, and the surrounding area, near the main office of the Respondent's offshore division. The employees are assigned to various barges as needed rather than to a specific barge.

The Respondent employed 125 to 150 employees on the barge involved in the Platform Gail project. The project was accomplished in 4 phases, with approximately 20 employees remaining on the barge during

the idle periods between phases.³ The employees assigned to the project were transported from New Orleans to Los Angeles by commercial plane, then to Port Hueneme by bus and to the barge by boat or helicopter. The employees remained offshore for a maximum of 56 days, then were returned to New Orleans for a minimum of 28 days before being reassigned.

The Union initially contacted the Respondent on February 6, 1987,⁴ seeking a meeting to discuss a potential contract with the Respondent as well as the employment of union members on the Platform Gail project. At the meeting held on April 13, the Respondent informed the Union that it already had an experienced crew, and approximately 10 days later the Respondent also declined to enter into a collective-bargaining agreement with the Union. On April 27, the Union's president requested by letter that the Respondent provide access to the construction barges and worker habitats for the Platform Gail project for the purpose of conducting organizational activity. Specifically, the Union requested biweekly access for four organizers at a time, who would remain on the barge for a minimum of a week. The Respondent was requested to provide transportation, food and necessities, and a meeting place, the additional direct cost of which would be reimbursed by the Union.

On May 20, without a response from the Respondent to the April 27 letter, the Union filed the charge in this proceeding. On June 11, the Respondent refused the Union's request for access, stating that, at that time, there were no employees at the project site, that there were only 3 or 4 more weeks of work on the project, and that there were sufficient opportunities for onshore access to the employees. The Respondent also offered to provide the Union the times that crew members would be transported to and from shore for the remainder of the project. In reply, the Union challenged the Respondent's estimate of the remaining work, but accepted the offer of information concerning the times employees would be transported, and requested that this information be as detailed as possible, including names, dates, places, and times.

By letter dated July 2, the Respondent informed the union president that crew members were scheduled to go offshore on July 31 at 1 p.m. from Dock No. 1 in the port at Port Hueneme. On that day, union representatives distributed handbills and engaged in brief conversations with employees at the dock during the 10 to 12 minutes required for the employees to leave the bus, gather their luggage, and board the boat that would take them to the barge.

¹ On May 30, 1990, Administrative Law Judge James S. Jenson issued the attached decision. The Respondent filed exceptions and a supporting brief and the Union filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² 291 NLRB 11 (1988).

³ The four phases of the project occurred on the following dates: pipeline work from December 17, 1986, through January 10, 1987; jacket installation work from April 1 through May 31, 1987; pipeline connection work on July 1-15, 1987; and topside installation on August 1-18, 1987.

⁴ All dates are 1987 unless otherwise indicated.

We initially consider the relative strength or weakness of the Respondent's property rights and the employees' Section 7 rights in accordance with the factors considered by the Board in *Jean Country*.⁵ As the judge found, the barges operated by the Respondent, including the derrick barge used for the Platform Gail project, are approximately 550 feet long and 150 feet wide, with the main deck located approximately 60 feet above the water. On the main deck are a variety of tools and equipment, including a large crane, as well as a helicopter pad. The lower level provides office, living, and storage spaces. The Respondent limits access to the barge to individuals necessary for its operation. Based on these findings, we find that the property interest of the Respondent is very strong. We similarly find that the right of the employees aboard the barge to organize freely is a central Section 7 interest.⁶

We next consider whether the Union had any reasonable alternative means of communicating its message to the Respondent's employees. We agree with the judge's conclusion that the employees on the Platform Gail project were inaccessible to the Union through usual channels of communication. As noted above, the project was situated approximately 7 miles off the California coast, and employees remained offshore for up to 56 days at a time. Furthermore, the Respondent is based in Louisiana, at a distance of approximately 1850 miles from the Platform Gail project. When the employees assigned to the project were transported onshore, they were returned to New Orleans. Many of the employees reside in the area of Morgan City or Houma, Louisiana, with others living elsewhere in Louisiana and 11 other States. Although it may have been possible for the Union to reach the employees during their time at home, such contacts would have been extremely onerous for a local California union attempting to organize employees engaged in a project located in that State. Moreover, the record indicates that, after their periods onshore, employees were not necessarily reassigned to the same project. Therefore, the Union had no way of knowing whether contacting employees who had returned from Platform Gail would further its goal of organizing the employees working on that project.

As found by the judge, the Union made a number of attempts to identify and reach employees involved in the project. These efforts included, inter alia, checking the port at Port Hueneme and contacting the harbor master at least once a week; calling the State Unemployment Development Department and reviewing employment advertisements in the local newspapers for

indications that the Respondent was hiring employees for the project; making inquiries at a local saloon concerning anticipated work in the area; asking tugboat companies whether they had any contracts to provide services to the Respondent; and sending a union member to seek employment on the project in an unsuccessful effort to initiate organizational activities on the site. In addition, the Union asked the Respondent for information concerning the schedule for transporting employees onshore and offshore, including specific dates, times, locations, and employee names. Even though the Respondent had offered to provide this information regarding the transportation of employees for the remainder of the project, it ultimately failed to do so. The Respondent notified the Union of only one occasion, on July 31, when employees were to be transported offshore, but did not provide the names of the employees involved. Furthermore, the Respondent failed to furnish notice of five other dates between July 1 and August 18 when employees traveled to or from the barge.⁷

We also agree with the judge's conclusion that the Union's encounter with employees at the dock on July 31 did not afford the Union a reasonable alternative means of conveying its organizational message. The union representatives had the opportunity to distribute handbills and answer employee questions as the employees walked from a bus to an awaiting boat, a distance of approximately 50 to 75 feet. The union representatives did not attempt to proceed onto the boat or the floating ramp leading to it. The boat left the dock only 10 to 12 minutes after the bus carrying the employees had arrived, obviously allowing minimal time for discussions between employees and the union representatives. The Respondent contends that it had instructed William Fingland, the individual overseeing the crew change, to provide at least an hour for the union representatives to meet with the employees and that Fingland released the boat only when it appeared that the Union, by not going onto the floating dock, was attempting no further discussion with employees. We are not persuaded by this argument. The Respondent's letter to the Union notifying it of the crew change did not state that the Union would be allowed any additional time to meet with employees, and the Respondent did not inform either the union representa-

⁵ *Jean Country*, supra at 12.

⁶ See *Sears, Roebuck & Co. v. San Diego County Council of Carpenters*, 436 U.S. 180, 206 fn. 42 (1978); *Fairmont Hotel*, 282 NLRB 139, 142 fn. 18 (1986).

⁷ Because, as discussed above, the employees assigned to the Platform Gail project lived at a great distance from the location of the project and the Union and were not necessarily reassigned to that project after returning onshore, we note that in this case a list of employee names and addresses for the purpose of contacting them at their residences would have been of limited assistance to the Union's organizing effort. Moreover, after the Respondent refused the Union's request for access to the barge, the Union asked for information, including employee names, that would aid it in identifying and contacting employees onshore during crew changes. We find these efforts by the Union a sufficient attempt at using alternative means in the unique circumstances of this case.

tives or the employees at the dock that they had an opportunity to engage in more extensive discussions.

In sum, we conclude that the Respondent has violated Section 8(a)(1) by failing and refusing to provide reasonable access to the employees involved in the construction of Platform Gail. We base that conclusion on the following factors: the inaccessibility of the Respondent's employees aboard the barge on the Platform Gail project; the small probability that contacts with the employees while onshore in their scattered homes would be useful in organizing the Platform Gail employees, in contrast to the substantial burden that such contacts would entail for the Union; the Respondent's failure to provide requested information that would have facilitated onshore access to employees in California; and its failure to provide any significant opportunity to establish contacts with employees during the one crew change of which the Union was made aware.

Having found that the Respondent has violated Section 8(a)(1), we next consider the remedy necessary to ensure adequate access to the Respondent's employees. The judge, relying on the Board's decisions in *North Star Drilling Co.*,⁸ and *G. W. Gladders Towing Co.*,⁹ recommended that the Respondent be ordered to allow the Union access to its employees on board its derrick barges or, alternatively, to provide suitable onshore access to its workers.¹⁰ The Respondent argues in its exceptions that its construction barges present the combined hazards of construction and maritime workplaces, and that the Respondent accordingly has strictly limited access to those individuals needed for the operation of the vessels, i.e., employees, subcontractors, and customer representatives, who must be insured. As noted above, the main deck of the barges rises 60 feet above the water, and contains a large crane, other equipment, and a helicopter pad. Personnel transported to the barge by boat are lifted to the deck by a cargo net suspended from a crane.

Based on the substantial safety considerations arising from the location of the barge, its operations, and the transportation of individuals to it, we are persuaded that access to the barge is not reasonably necessary in

the particular circumstances of this case to accommodate the Section 7 rights of the employees. We find that an appropriate accommodation of those rights may be achieved by ordering the Respondent to provide the Union suitable onshore access to its employees working within the jurisdiction of the Union.¹¹ Such access would require arrangements whereby, pursuant to advance notification and consultation between the Respondent and the Union, the Respondent's employees, identified as such to the Union, would be present and can be contacted face to face by the Union on property where the Union has a right to be present, for regular periods and reasonable lengths of time.

ORDER

The National Labor Relations Board orders that the Respondent, McDermott Marine Construction, a Division of McDermott, Inc., Morgan City, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to allow nonemployee organizers of Pile Drivers Local Union No. 2375, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO to have reasonable means of onshore access to employees involved in projects on its derrick barges for the purpose of soliciting them on behalf of the Union, or for consulting, advising, meeting, or assisting the employees in regard to their rights to self-organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Allow nonemployee organizers of Pile Drivers Local Union No. 2375, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO to have reasonable onshore access to employees working within the jurisdiction of the Union involved in projects on its derrick barges for the purpose of soliciting them on behalf of the Union, or for consulting, advising, meeting, or assisting the employees in regard to their rights to self-organization.

(b) Post at its premises in Morgan City, Louisiana, and at employee transfer points and on board its derrick barges within the jurisdiction of the Union, copies of the attached notice marked "Appendix."¹² Copies

⁸ 290 NLRB 826 (1988).

⁹ 287 NLRB 186 (1987).

¹⁰ In *North Star Drilling*, the Board adopted the judge's finding that, although the employer asserted that it maintained a no-visitors policy based on concerns for safety, liability, and confidentiality, that policy had previously yielded to allow a substantial degree of visitation, and therefore visits by union representatives could also be tolerated. The Board further adopted the judge's recommendation that, in view of the potential danger, expense, and interference with operations associated with onboard access, the employer be given the option of instead providing onshore access that would reasonably duplicate the personal contact that would occur on the vessel. In *G. W. Gladders*, the Board ordered the same alternative remedies, recognizing that going aboard the employer's towboats entailed numerous hazards, that visitors were not encouraged, and that non-employee organizers may interfere with production.

¹¹ We note that the Respondent represents in its brief that the physical description provided in the record of the barge used in the Platform Gail project and the means of boarding the vessel are typical of the Respondent's other barges. We further note that the Respondent's project manager testified that the scheduling of employees' time onshore and offshore was the same for all crew members working on west coast projects.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to allow nonemployee organizers of Pile Drivers Local Union No. 2375, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO to have reasonable means of onshore access to employees involved in projects on our derrick barges for the purpose of soliciting them on behalf of the Union, or for consulting, advising, meeting, or assisting the employees in regard to their rights to self-organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL allow nonemployee organizers of Pile Drivers Local Union No. 2375, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO to have reasonable onshore access to employees working within the jurisdiction of the Union involved in projects on our derrick barges for the purpose of soliciting them on behalf of the Union, or for consulting, advising, meeting, or assisting the employees in regard to their rights to self-organization.

MCDERMOTT MARINE CONSTRUCTION, A DIVISION OF MCDERMOTT, INC.

Raymond Norton, for the General Counsel.

Steven Rose (Kullman, Inman, Bee & Downing), of New Orleans, Louisiana, for the Respondent.

Gerald V. Salvo (DeCarlo, Conner & Selvo), of Los Angeles, California, for Local 2375.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge. This case was heard in Los Angeles, California, on February 22 and 23, 1989, pursuant to a complaint which issued on March 30, 1988. The complaint alleges that the Respondent denied Local 2375's agents access to its construction barges and worker habitats of Platform Gail, an oil platform under construction off the coast of Southern California, for the purpose of engaging in organizational activities. The Respondent claims that the access sought by Local 2375 represents a significant infringement on Respondent's property rights without any corresponding advancement of meaningful Section 7 rights on the part of its employees, and that the Union failed to establish that alternative means of communication through the exercise of reasonable attempts did not exist. All parties were afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally and to file briefs. Briefs were filed by the General Counsel, Local 2375 and Respondent, and have been carefully considered.

On the entire record in the case, including the demeanor of the witnesses, and having considered the posthearing briefs, I make the following¹

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Louisiana corporation, is engaged in the offshore construction and installation of drilling platforms and pipelines. It is admitted and found that it annually sells and ships goods and services valued in excess of \$50,000 directly to customers located outside Louisiana, that it annually purchases and receives goods or services valued in excess of \$50,000 directly from suppliers located outside Louisiana, and that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and found that Pile Drivers Local Union No. 2375, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Setting*

The Respondent is engaged in the construction and installation of oil drilling platforms and pipelines off the coasts of North and South America and West Africa. The Offshore Di-

¹The Respondent filed a reply brief on April 28, 1989, and on May 1, the Charging Party filed a motion to strike Respondent's reply brief. Sec. 102.4 of the Board's Rules and Regulations and Statements of Procedures makes no provision for reply briefs nor does it prohibit them. Whether they are permitted appears to be within the discretion of the administrative law judge. Having concluded it is not necessary to consider matters raised in Respondent's reply brief in order to arrive at a decision herein, the General Counsel's motion to strike is granted.

vision main office is in Morgan City, Louisiana. It operates 12 construction barges, consisting of derrick or crane barges used for the installation of platforms, driving piles, and making heavy lifts, lay barges which are equipped to lay pipes, and combination barges which have both "lay" equipment and heavy-lift cranes. The construction barges were designed and fabricated by Respondent at a cost of approximately \$60 million each and are about 550 feet long and 150 feet wide with the main deck approximately 60 feet above the water. A large crane capable of lifting 2200 tons is located on the main deck along with a variety of equipment including hammers, pile followers, grouting equipment, diving equipment, welding equipment, spare anchors, coils of anchor rope and a helicopter pad which is located on the bow. Below deck are located the barge office, galley area, employee quarters, a recreation room and a gym each capable of accommodating 40 people, a dining area accommodating 80 people, machinery spaces containing the equipment needed to run the barge, and storage areas for fuel, water, and other supplies not stored on the deck. The barges operate 24 hours a day, with two 12-hour shifts, 7 days a week. Respondent maintains a work force of 500 to 550 employees in the following non-supervisory classifications: riggers, welders, equipment operators, gantry crane operators, divers, crewmen, cooks, galley hands, and clerks. Most of the employees reside in the Morgan City-Houma, Louisiana area and are not permanently assigned to specific barges, but are interchanged between the various barges as needed. The vessel involved in this proceeding, derrick barge 100 (DB-100) employed from 125 to 150 employees who had worked on another project in the Gulf of Mexico within the prior month. Employees are customarily transported from New Orleans to Los Angeles by commercial plane, from Los Angeles Airport to Port Hueneme by bus, and from Port Hueneme to the barge located approximately 7 miles offshore mainly by boat but occasionally by helicopter. Transportation by boat has always been from the same public dock in Port Hueneme Harbor, and by helicopter from the Oxnard Airport, a public facility located adjacent to Port Hueneme. Loading time between the bus and boat may vary from as little as 10 or 12 minutes, as in the instant case, to as much as 4 hours if the transportation of supplies and equipment are also involved. Personnel are lifted the 60 feet from the boat to the barge deck by means of a cargo net suspended from a crane. Access to the barges is limited to employees, subcontractors and customer representatives who must be insured. No security personnel are on-board the barges.

Respondent opened a field office in Port Hueneme in May 1986, and began a series of construction projects off the west coast consisting of the Texaco Harvest pipeline, the Hidalgo platform and topside facilities, the Hidalgo pipeline, the Point Arguello natural gas pipeline, the Point Arguello pipeline, the Gail platform and topside facilities and the Gail pipeline.

Work performed on Platform Gail was in four phases. The first phase, consisting of pipeline work, occurred from December 17, 1986 through January 10, 1987. The second phase, consisting of jacket installation work, occurred from April 1 through May 31, 1987. The third phase, consisting of pipeline connection work, occurred from July 1 through 15, 1987. The fourth phase, consisting of topside installation, occurred from August 1 through 18, 1987. At the end of

each phase, the main part of the work crew was returned at Respondent's expense to New Orleans where they were released. When the barge was in an idle condition, a crew of approximately 20 remained on board. While the time employees were offshore varied according to the circumstances, the maximum time was 56 days followed by return to New Orleans for a minimum of 28 days before reassignment.

Joel Harzan is the president and assistant business representative for Local 2375, Winston Glidden is the recording secretary and business manager, Pierre Sain is the financial secretary, and Steven Robinson is a member of the Local Union. Alfred Encinas and Martin Trenouth are officials of the Los Angeles District Council of Carpenters with whom Local 2375 is affiliated. Daniel Sullivan was Respondent's project manager on the Platform Gail project and William Fingland was the project administrator at Respondent's Port Hueneme field office.

On February 6, 1987, Harzan sent a letter to Respondent and Chevron U.S.A., Inc., congratulating them on the recent issuance of a permit by the California Coastal Commission to install Platform Gail,² and asking for a meeting "to discuss our current contract and its benefits to you and your company." Harzan also called Sullivan on the phone and asked whether Respondent was a party to the general president's offshore agreement, to which he received a negative response, and if he was interested in meeting and discussing a "potential contract" with Local 375.³ Sullivan responded he already had a crew for the Platform Gail project but nevertheless agreed to meet with Harzan. The meeting took place on April 13 between Harzan and Glidden for Local 2375, and Sullivan.⁴ Glidden testified they were aware that Respondent's employees were already at work on the project and stated the purpose of the meeting was to get Respondent to use its local union members from California instead of its own employees from Louisiana. The three discussed wages and fringe benefits and the use of apprentices for the purpose of reducing wage costs. Sullivan stated he already had an experienced crew on the barge but that he would review the Union's proposed contract with his boss and let them know the results. About 10 days later he called and told Glidden that "we really weren't interested, that we had the people that we needed on the barge, and everything was working well, and we were about halfway through, so there wasn't any point really in talking any more about it."

On April 27, Harzan sent the following letter to Respondent's office in Louisiana and Chevron requesting access to Platform Gail for organizing purposes:

Pile Drivers Local Union 2375 hereby requests access to Platform Gail construction barges/workers habitats to engage in organizational activities protected by Section 7 of the National Labor Relations Act ("NLRA"), 29 U.S.C. 141, et seq. Access is requested

²The parties stipulated that the first phase, consisting of pipeline work, took place from December 17, 1986 through January 10, 1987.

³The president's offshore agreement is an agreement between all of the crafts and the individual contractors that do offshore work. Harzan understood Respondent had been a party to it but had canceled it in approximately 1984.

⁴Phase 2, consisting of the jacket installation work, had started on April 1.

during each of the following phases: (1) installation, (2) hookup and commissioning, (3) mobilization, installation and testing of the subsea pipeline, (4) development drilling phase, and (5) production phase.

We request that access be granted to four organizers at a time, and that these organizers initially be granted access biweekly. We request that these organizers be transported to and from the barge and/or platform by the vessels or crew craft used to supply that equipment.

Because our organizers could communicate with employees only during employee off hours, and because the off hours of the employees vary greatly, we request that our organizers be permitted to remain on the barge and/or platform for at least a week at a time at intervals related to crew change intervals.

While aboard the platform/barge, our organizers will require the same food and other conveniences and necessities provided to regular employees, as well as a place to meet with employees that would not be under surveillance by any supervisory personnel. We agree to reimburse you for any additional direct cost to you associated with providing transportation and the above items to our organizers. We further agree to abide by all proper safety and other regulations and rules validly in effect on the barge/platform.

The NLRA is in full force and effect on Platform Gail. *Outer Continental Shelf Lands Act*, 43 U.S.C. 1333(c). Because the location and nature of the work involved precludes our reaching the employees by reasonable efforts through other available channels, the NRA requires that you provide us with the access we have requested.

This access request is based on the information currently in our possession, and we reserve the right to modify it as a result of additional information, and particularly upon the basis of conditions actually encountered during organizing. Please respond expeditiously, and no later than one week from the date of receipt of this request.

Not having received any response to the April 27 letter, on May 20, Local 2375 filed the instant charge with the Board. The second phase, which commenced April 1, was completed May 31, 1987. On June 11, Sullivan wrote Harzan as follows:

In response to your letter of April 27, 1987, please be advised that McDermott's work in connection with the Platform Gail is near completion, and at the present time, McDermott has no employees at that project site. At the present time, it is anticipated that there will be, at most, only three to four more weeks of work on our contract for the Platform Gail Project, which is expected to be performed during brief periods in June and August.

To the extent your organization seeks access to our barges for the remainder of our work on this project, we decline to grant such access under the terms specified in your letter. We believe there is ample opportunity for your organization to contact crew members shoreside as crew members go to and return from the worksite. In this connection, we would be willing to

provide you with estimated times during which crew members are scheduled to be transported to/from shoreside, for the remainder of our project.

Should you desire further information, please contact us at your convenience.

After renting a boat and going offshore with a camera to ascertain the status of the platform at that time, Harzan wrote Sullivan the following letter dated June 19:

This is in response to your letter on the referenced subject dated June 11, 1987. We believe that letter is factually inaccurate in the following respects: None of the decking has been attached to the Platform. We do not believe that your estimate of three to four weeks of work remaining is accurate; we believe, it is likely to be eight to twelve weeks.

You have declined to grant us access under the terms specified in our letter. Please immediately inform us of your precise objections to any or all of those terms so that we can discuss alternatives.

You refer to ample opportunity to contact crew members shoreside, as they go to and return from the worksite, and offer to provide estimated times of their transportation for the remainder of the project. We reserve all our rights, renew our request for access (both our prior specific one and in general), and affirm the entire contents of this letter. Under the circumstances we accept your offer to provide the information specified in your letter. Please immediately provide the undersigned at the letterhead address with that information in as detailed a form as you possess or can obtain. We request to know specific names, dates, places and times.

On July 2, Sullivan sent Harzan the following letter:

This is to acknowledge receipt of your letter dated June 19, 1987.

As we previously advised you, your request for access aboard our barges working at the Platform Gail Project was denied for the reason that ample alternative means of communication with our employees exist without infringement upon McDermott's property rights. Furthermore, under no circumstances do we believe we would have any obligation to provide your organizers with transportation, room and board, or provide meeting facilities, as requested in your letter. In an effort to facilitate your meeting with employees on shore, we hereby advise you that crew members are scheduled to go offshore on Friday, July 31, 1987. They will be arriving by bus at approximately 1:00 p.m. at Dock No. 1 in the Port of Hueneme, Hueneme, California.

Insofar as your letter expresses disagreement as to the estimated amount of work remaining to be performed by McDermott at the Platform Gail Project, we can only reiterate our estimate of three to four weeks of work remaining on our contracts.

The parties stipulated that phase 3, consisting of pipeline connection work, occurred from July 1 through 15 and that phase 4, consisting of topside installation, occurred from August 1 through 18, for a total of 33 days, or 4 weeks and

5 days. Contrary to the representation made in its June 11 letter, it does not appear Respondent informed the Union when the crew was to go offshore on July 1 to start phase 3, onshore on July 15 with the completion of phase 3, offshore on August 8 and 9, or onshore August 18 with the completion of phase 4.⁵

While at the time of the hearing Respondent did not have any contracts to perform further work on the West Coast, it had plans to bid on another project. If awarded that contract, it would expect to perform additional work in 1990 or 1991.

B. *The Union's Access to Employees*

Encinas and Trenouth, from the District Council of Carpenters, along with Glidden and a couple of Local 2375 members, arrived at Dock No. 1 at Port Hueneme about 11:30 a.m. on July 31. Encinas and Trenouth were there only to videotape what was to transpire and did not engage in any organizing activities.⁶ The bus carrying the employees from Los Angeles International Airport, and the boat to be used in transporting them offshore, both arrived at the dock area a couple of minutes before 1 p.m. on July 31. The bus stopped about 50 to 75 feet from the gangway onto the boat. As the men exited the bus and picked up their luggage from the bus luggage compartment, the two union members passed out union handbills. Glidden claimed he stood at the rear of the bus where he also passed out handbills and talked to the men on their way to the boat.⁷ While he testified they asked a few questions about wage scales in the area and the availability of work when the project ended, Glidden characterized the men as being in "pretty much of a hurry" to get on the boat. An individual, presumed to be a foreman, stood to the rear of the bus and directed the men toward the boat. As the workers moved toward the dock, the three union men doing the handbilling walked along and talked to them until they reached the floating ramp leading to the boat. Inasmuch as the men had to climb over the railing of the boat while carrying their luggage, traffic backed up on the floating ramp. No attempt was made by the union personnel to go onto the floating ramp, dock, or the boat which left about three minutes after all workers were aboard. The elapsed time from the arrival of the bus to the time the boat left the dock was approximately 10 to 12 minutes.

Fingland testified that he had been notified by the personnel manager in Louisiana that union representatives might be present at the dock and that he was to allow them to meet

with the workers for at least an hour if they wanted to. He testified he did not notify the workers in advance that the union representatives would be present and that they had an hour to talk to them if they wanted to. He testified that after the workers were on the boat, he stood back to see if there were any conversations going on between the workers and union representatives, and in the absence of any, released the boat. He did not engage in conversation with any of the union personnel and no one asked him to delay departure so they could talk to the workers.

The videotape made by Encinas (G.C. Exh. 3) appears to have commenced recording after a number of the workers had already left the bus, retrieved their baggage and gone around either the front or rear of the bus toward the boat. Comments made by either Encinas or another individual with him indicate there were either 25 or 26 workers involved in the transfer. The attachment to the stipulation of the parties indicates there were 55. After all the workers had left the bus, Encinas is heard to comment that the "Handbilling went quick and easy. No attempt to stop—only about 25 people." At 1:03 p.m., someone commented on the videotape "They handbilled everyone, right" and "One guy's reading it now, see him, on the railing." At 1:04 p.m., Encinas commented "Why don't you go on the boat and talk to them Marty [Trenouth]?" At 1:05 p.m., the comment was made that the bus had left, and the videotape shows all of the workers were on board the boat and the gangway leading to it was empty except for one man that appears to have been Fingland. From 1:05 until 1:08 p.m., when Fingland cast off the line securing the boat to the pier, the workers are shown standing on the after deck of the boat talking among themselves. The videotape fails to disclose any union representatives standing near the gangway leading to the boat in an attempt to talk to the workers during this time.

C. *Alternative Methods of Access*

The General Counsel and Local 2375 argue that there was no effective alternative means for the Union to contact Respondent's workers and therefore denying it access to Platform Gail violated Section 8(a)(1) of the Act. The General Counsel seeks an order fashioned after that in *G. W. Gladders Towing Co.*, 287 NLRB 186 (1987), requiring that Respondent allow Local 2375 reasonable access to the workers on board the derrick barge or, alternatively, onshore access "for the opportunity of face-to-face contact with employees, identified to the Union as eligible for unit inclusion, for reasonable lengths of time, on property where the Union has a right to be present. Such access should be pursuant to advance consultation with the Union followed by notification to the crew of the access arrangements." Local 2375 contends it should be granted access to workers on the barge as specified in its letter of April 27.

Respondent contends "the Section 7 rights which the Union purports to be advancing are not as strong as the property rights sought to be protected by Respondent. Furthermore, the Union has failed to establish that alternative means of communication through the exercise of reasonable attempts did not exist."

To support the claim that there was no effective alternative means available to the Union to contact Respondent's workers, the General Counsel points out that representatives of Local 2375 did the following in an effort to gain knowledge

⁵ The attachment to the stipulation of facts, G.C. Exh. 2, presents a confusing picture of employee movement. The figures for phase 1, December 17, 1986, to January 10, 1987, show 105 employees going to the Platform Gail project, and 83 leaving, leaving a balance of 22 presumably left onboard at the completion of the phase. The figures for phase 2, April 1, 1987, through May 31, indicate 187 additional employees transferred to the project, for a total of 209, and that 251 left the project, or 42 more employees leaving than had gone to the project. Phase 3, from July 1 through 15, shows only 1 employee going to Platform Gail and 71 leaving at the end of the phase, indicating that 112 more employees had left the project than had come aboard over the first 3 phases. It appears that 84 employees joined the project during phase 4 and that a total of only 36 left throughout the phase. The overall totals indicate that 64 more employees left than came to the project. No testimony was offered to explain the discrepancies.

⁶ The videotape is G.C. Exh. 3.

⁷ The videotape fails to show Glidden at the rear of the bus.

of the crew Respondent intended to use: (1) checked the port at Port Hueneme and with the harbor master there once or twice a week; (2) called the California Unemployment Development Department to see if Respondent was hiring through that facility; (3) perused local newspapers and want ads; (4) made "[b]asic perusals of the various portinos, harbors, piers, et cetera"; (5) went to a "saloon" in the Port Hueneme area at least twice a month and made inquiries regarding anticipated local hire or work in the area; (6) having learned that people were boarding the launch jacket for Platform Gail then anchored in Los Angeles harbor, Sain went to the harbor and inquired of one of the men "who would be the proper people to speak to about talking about a labor contract," and was referred to Respondent's Port Hueneme office; (7) inquired of two tugboat companies whether they "had any contracts to service tug or crew boat facilities" for Respondent; and (8) sent a union member to Respondent's Port Hueneme and Morgan City, Louisiana offices in search of a job so the Union would have an in-house organizer. Local 2375 also made the April 27 request for access on board Platform Gail and handbilled on July 31 as outlined above.

Respondent argues that the only organizational attempt made by Local 2375 prior to making its request for direct access to Respondent's property was its unsuccessful attempt to have a current member of the Union hired by Respondent. It points out that the Union failed to request a list of names, addresses or telephone numbers of employees which it argues precludes a finding that the Union exhausted all reasonable means of communication;⁸ no attempt was made to send literature through the mail; no attempt was made to contact employees either by telephone or to visit them at their homes; no attempt was made to hold meetings in the Morgan City area or to enlist the help of Respondent's employees in soliciting or distributing literature; and no attempt was made to coordinate organizing activities with local affiliates in Louisiana. Rather, Respondent points out, shortly after Respondent declined to voluntarily recognize Local 2375, the Union requested access to its barges on the Gail Platform in the form of four organizers on a biweekly basis to remain aboard not less than a week at a time, with the further request that Respondent furnish transportation to and from the work site, food and accommodations. Respondent makes the further point that it furnished the Union with the time and location that the crew was to go offshore on July 31, and had informed Fingland that union representatives might be present and that he was to allow them no less than an hour to talk to employees if they desired. Union representatives did in fact meet the employees on that date and distributed handbills but did not request any additional time to talk to them. Respondent alludes to the fact its property interest in the construction barges is extremely high and that it has a strict policy limiting access to those individuals who are necessary for the operation of the vessel. Mention is also made

⁸ Such a list produced at the hearing pursuant to subpoena identifies approximately 568 employees by, presumably, a social security or otherwise unexplained number and home address, but not by name, nor is there a telephone number listed. Approximately 119 have Houma, Louisiana addresses. While most of the other addresses are in cities and towns in Louisiana, a number are in Florida, Mississippi and Alabama, and a few in Washington, Texas, Georgia, New Mexico, North Carolina, Pennsylvania, Tennessee, and Indiana.

of the fact that there are no police or security personnel available on the barges to maintain order.⁹ It is argued that the interests being pursued by the Union were not in furtherance of the Section 7 interests of the employees working aboard the barges, but rather in direct conflict since the Union's real object was to secure work for its local union members which would have necessarily resulted in the displacement of Respondent's current employees.¹⁰

Discussion

Where, as here, both the property and Section 7 rights are very strong and stand on relatively equal footing, it is necessary to consider whether reasonable alternative means by which the Union could have communicated its message were available. "[T]he availability of reasonable alternative means is a factor that must be considered in every access case." *Jean Country*, 291 NLRB 11 (1988). "... a property owner who has closed his property to nonemployee communications, on a nondiscriminatory basis, cannot be required to grant access where reasonable alternative means exist, but in the absence of such means the property right must yield to the extent necessary to permit the organizers to communicate with the employees." *Ibid.* "... the General Counsel must show that without access to the property, those seeking to exercise the right in question have no reasonable means of communicating with the audience that exercise of that right entails. . . . What is required is simply a clear showing, based on objective considerations, rather than subjective impressions, that reasonably effective alternative means were unavailable in the circumstances. In some contexts, the attempt must in fact have been made to support on objective conclusion that an asserted alternative is not reasonable, although in others the unreasonableness of the asserted alternative may be clear without such an attempt. . . . [I]t will be the exceptional case where the use of newspaper, radio and television will be feasible alternatives to direct contact." (Citation omitted.) *Id.* at 12. "If the location of a plant and living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property." *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 113 (1956).

Contrary to the Respondent's argument, "the case at hand presents a rare situation that, like *Lake Superior Lumber and Grossinger's*,¹¹ involves 'unique obstacles to nontrespassory methods of communicating with employees' (footnote omitted) warranting union access for organizational purposes." *G. W. Gladders Towing Co.*, 287 NLRB 186 (1987). As in

⁹ Sullivan testified there were no safety considerations which would prevent a union organizer from entering the crew's quarters, recreation room, dining room, and gym except for being escorted across the deck area. The Union also represented that its organizers had worked on similar platforms and were well acquainted with conditions on the derrick barges.

¹⁰ While Local 2375 acknowledges its initial interest was in obtaining a collective-bargaining agreement which would have enabled it to secure work for its local union members, it also points to the fact it made an unsuccessful attempt to get an undercover organizer hired to organize Respondent's employees from within.

¹¹ *NLRB v. Lake Superior Lumber Corp.*, 167 F.2d 147 (6th Cir. 1948), *enfg.* 70 NLRB 178 (1946); *NLRB v. S & H Grossinger's*, 372 F.2d 26 (2d Cir. 1961), *enfg.* as modified 156 NLRB 333 (1965).

G. W. Gladders, the General Counsel has established that under the facts presented here the “inaccessibility” of the Respondent’s employees on the Platform Gail project “makes ineffective reasonable attempts to nonemployee union organizers to communicate with them through the usual channels.”

At the outset it is noted that Respondent employs in excess of 550 employees, the majority of whom live in the vicinity of New Orleans, Morgan City, and Houma, Louisiana, a distance of approximately 1850 miles from both the office locations of Local 2375 and the Platform Gail project. Other employees are scattered throughout 11 other States. In these circumstances the impracticality, if not impossibility, of establishing personal contact with Respondent’s employees at their homes for organizing purposes is apparent. I conclude, therefore, that it was not feasible for the Union to conduct organizing meetings, telephone employees or visit them in their homes and to have attempted such would have required the expenditure of considerable time, effort, and resources, merely to confirm what should be clear from the objective facts. Nor, in my view, is the distribution of literature through the mail a viable substitute for personal contact. It is further noted that in its letter of June 19, 1987, accepting the Respondent’s offer of June 11 to “provide you with estimated times during which crew members are scheduled to be transported to/from shoreside, for the remainder of our project,” Local 2375 requested “to know specific names, dates, places and times.” While the date, time and location of the transfer point were furnished with respect to July 31, the names of the targeted employees was not. Nor were the employees informed that union representatives would be present at the Port Hueneme transfer point and that they could have time to talk to them. It is further significant that Respondent failed to advise the Union of the times during which employees were scheduled to be transported to and from shoreside for the remainder of the project as represented in its letter of June 11.

With respect to Respondent’s policy limiting access to those individuals who are necessary for the operation of the vessel, and its concern that there are no on board security personnel, there is no reason to suppose that visits by union organizers, under carefully drawn procedures, could not be tolerated aboard the derrick barges notwithstanding the limited access policy and lack of security personnel. As noted earlier, the union organizers have experience working and living on derrick barges and the likelihood that they would create a security problem is purely speculative and could in all probability be handled by managerial and supervisory personnel on board. As noted earlier, Sullivan stated safety considerations would not prevent union organizer access to the nonworking portions of the vessel frequented by off-duty employees.

Based on the foregoing, including in particular the Respondent’s failure to furnish Local 2375 with the names of employees going offshore on July 31, as requested in its June 19 letter to Respondent, or those going on/offshore thereafter, its failure to alert employees of the fact union representatives would be present for the purpose of engaging in organizing activity when they went offshore on July 31, and the haste with which the transfer from bus to boat took place, I find that the Respondent failed and refused to provide the Union with any reasonable means of access to its employees assisting in the construction of Platform Gail, as alleged in paragraph 7 of the complaint. *North Star Drilling Co.*, 290 NLRB 826 (1988); *G. W. Gladders*, supra.

IV. REMEDY

Having found Respondent violated Section 8(a)(1) of the Act by refusing to provide the Union with reasonable means of access to its employees assisting in the construction of Platform Gail, and that the General Counsel has carried the burden of showing that Local 2375 lacked reasonable alternatives to those provided in the Recommended Order for communicating with Respondent’s employees, I shall recommend a remedy fashioned after that in *North Star Drilling* and *G. W. Gladders*, requiring that the Respondent allow Local 2375 reasonable access to its work crew on board its derrick barges, or, alternatively, that the Respondent instead provide suitable onshore access to its workers, such as at locations where employees go offshore or onshore from the derrick barges. Such alternative onshore access would include arrangements whereby, pursuant to advance consultation and notification between the Respondent and Local 2375, and notification to the employees of the access arrangements, employees of the Respondent, identified as such to the Union, would be present and could be contacted face to face by the Union on the Respondent’s property, or other property where the Union has a right to be present, for regular periods and reasonable lengths of time.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 2375 is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to provide the Union with any reasonable access to its employees who were assisting in the construction of Platform Gail for the purpose of engaging in organizational activities protected by Section 7 of the Act, Respondent violated Section 8(a)(1) of the Act.

[Recommended Order omitted from publication.]